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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Processing Order for Applications Filed Pursuant to the Commission's New Local Broadcast Ownership Rules	)	FCC 99-240 (Public Notice)
	)	
Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules	)	MM Docket Nos. 91-221 and 87-8

To: The Commission

REPLY COMMENTS OF
PAXSON COMMUNICATIONS CORPORATION

Paxson Communications Corporation ("PCC"), by its attorneys, files these Reply Comments in response to the Commission's Public Notice FCC 99-240, released September 9, 1999 ("*Public Notice*") and also published in summary form in the *Federal Register* on September 17, 1999,[1] requesting supplemental comments and reply comments on the *Report and Order* in the above-referenced proceeding regarding local broadcast ownership.[2] Specifically, the Commission requested comments regarding the order in which it should process applications "filed the same day relating to stations in the same market" and which, because of the Commission's new "voice count" rules, might not all be eligible for grant.[3]

1 *See* 64 Fed. Reg. 50,668 (FCC) (Sept. 17, 1999).

2 *See Report and Order* in MM Docket Nos. 91-221 & 87-8, FCC-209 (adopted August 5, 1999) ("*TV Local Ownership Order*").

3 *See Public Notice* at 1 (citing *TV Local Ownership Order*, ¶ 150). *See also TV Local Ownership Order*, ¶¶ 64-70 (8 TV voice standard for duopolies) and ¶¶ 100-114 (one-to-a-market voice tests).

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In response to the Public Notice, eight parties in addition to PCC filed Comments by the October 4, 1999 deadline addressing the issue of the processing of applications seeking to create television duopolies. In its Comments, PCC demonstrated that an LMA-based approach that would give priority to an applicant's pre-existing interest in a station in the market (as demonstrated by an existing time brokerage agreement) would be rational, fair and efficient to administer.

PCC's review of the other Comments filed with the Commission indicates that there is clearly an industry consensus supporting PCC's approach.

Sinclair Broadcast Group, Inc., in its Comments, opposes any random selection procedure and urges the Commission to defer to the Department of Justice Antitrust Division's ("DOJ's") judgment on TV duopolies, arguing that DOJ has greater expertise in evaluating the competition aspects of a proposed merger. Alternatively, Sinclair proposes that the Commission resolve application conflicts filed on the same day based on an evaluation of each application's public interest benefits. In this scenario, Sinclair asserts, the Commission should give priority to an applicant that is presently involved in an LMA in the market in which it is seeking the second station, and if more than one application meets this test, the Commission should waive its rules and grant all such applications.

Tribune Broadcasting Company's Comments are in line with the view that, among simultaneously filed applications, the Commission should give preference to existing combinations and "FCC-sanctioned relationships." Tribune proposes to rank applications as follows: (1) pre-existing, previously non-attributable combinations either (a) already approved by the Commission or (b) legal under the old rules (such as a "debt/equity" interest which will now become attributable); (2) previously impermissible, but now permissible, combinations that were allowed temporarily, *e.g.*, pursuant to waiver or through creation of a trust; and (3) all others. Tribune suggests giving priority to the pre-existing relationships of longest duration in the first category, but accepts the use of random selection among applications of equal priority, once the applications have been ranked as described above, if any "ties" remain. Prior to the lottery, Tribune proposes that parties within a group be given 30-60 days to negotiate a settlement.

The National Association of Broadcasters' submission "expresses no opinion" on the method of determining processing order of conflicting applications. However, NAB urges the Commission to ensure that pre-existing station combinations – and particularly the "grandfathered" LMAs and radio/television combinations granted conditionally pursuant to a waiver – will be protected in any event. This means that parties with existing combinations should not be required to submit applications on the first possible filing date to preserve their rights, nor should they be forced into lottery in which they could lose their right to form a permanent combination.

The Association of Local Television Stations takes essentially the same position as NAB. It is neutral regarding the use of a lottery system, but is concerned about which applications should be deemed "conflicting" so as to become part of the lottery. ALTV agrees with NAB that parties with existing LMAs should be able to convert their interests to a duopoly at any time in the future, even in cases where the number of voices is below the threshold (currently 8 independent TV voices).

Only CBS Corporation, in its Comments, urges the Commission not to give credit to existing LMAs but, to its credit, CBS acknowledges that "its argument may be viewed as self-serving"[4] in light of its announced merger with Viacom, Inc.[5]

However, CBS' proposal to give preference on a "first-to-contract" basis is neither logically compelling nor administratively efficient. For example, CBS' "first-to-contract" proposal presents its own administrative complications. In some cases, an executed contract might not be immediately publicly announced, and another subsequently executed contract might be publicly announced first. CBS does not address how the Commission could or should resolve which of the two contracts would receive priority. Moreover, this possibility undermines CBS' position that parties would be on notice as to other parties' contractual arrangements concerning a particular market. Consider also the possibility that an executed, published contractual arrangement followed by an application filed with the Commission might languish in the agency's processing line, *e.g.*, if a petition to deny is filed, and might not ever be granted. Under CBS' theory, however, parties to a subsequently executed or announced contract regarding that same market would be held hostage until the "first-to-contract" application were acted upon by the Commission.

The central issue of the PCC-Sinclair-Tribune-NAB-ALTV approach to the Commission's processing query is the recognition that the Commission's new ownership rules are designed, in part, to rationalize television ownership by favoring the conversion of LMAs to outright ownership. In light of the Commission's rules equating certain time brokerage agreements with attributable ownership interests, it is completely consistent for the Commission

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[4] CBS Comments at 8.

to give priority to such existing arrangements when accepting applications to create ownership duopolies. Such a procedure would also be fundamentally fair in honoring existing contractual relationships between licensees.

Finally, PCC once again strongly urges the Commission to review its proposed adoption and implementation of the 8-voices standard in the context of permitting television duopoly. PCC believes that the 8-voices standard is utterly arbitrary in terms of the number of voices that would be required in a community following a duopoly creation. And, furthermore, the actual voices to be counted, *i.e.,* television only, is totally at odds with the Commission's own voice standard in the radio/television area and inconsistent with the Commission's position on competing media voices in individual markets. As PCC noted in its Comments, the Commission should definitely delay the implementation of the 8-voices standard pending further review and reconsideration as will be urged by many groups including PCC. Should the Commission begin to process duopoly applications prior to reviewing and revising its 8-voices test, PCC urges the Commission to apply an LMA-based approach that would give full credit to

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...continued

[5] Viacom, as CBS' merger partner, submitted separate Comments supporting the position taken by CBS.

existing LMAs in each market by affording them priority of processing and, where necessary, processing treatment notwithstanding the absence of eight voices in the market.

Respectfully submitted,

PAXSON COMMUNICATIONS CORPORATION

By: ______________________

John R. Feore, Jr.
Nina Shafran
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Ave., NW
Suite 800
Washington, D.C. 20036

October 12, 1999

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the attached "Reply Comments of Paxson Communications Corporation" was either hand delivered or sent via first class mail, as indicated, this 12th day of October, 1999, to each of the following:

Roy J. Stewart, Esq.*
Chief, Mass Media Bureau
Federal Communications Commission
445 Twelfth Street, SW
Room 2-C347
Washington, DC 20554

Barbara A. Kreisman, Esq.*
Chief, Video Services Division
Federal Communications Commission
445 Twelfth Street, SW
Room 2-B616
Washington, DC 20554

Victoria Phillips, Esq.*
Chief, Legal Branch
Policy and Rules Division
Federal Communications Commission
445 Twelfth Street, SW
Room 2-C165
Washington, DC 20554

Angela Campbell, Esq.
Citizens Communications Center Project
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Suite 312
Washington, D.C. 20001

Andrew Jay Schwartzman, Esq.
Cheryl A. Leanza, Esq.
Media Access Project
1707 L Street, N.W., Suite 400
Washington, D.C. 20036

Martin R. Leader, Esq.
Kathryn R. Schmeltzer, Esq.
Brendan Holland, Esq.
Fisher, Wayland, Cooper, Leader
& Zaragoza, LLP
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, DC 20006-1851

Henry L. Baumann, Esq.
Jack N. Goodman, Esq.
Jerianne Timmerman, Esq.
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

David L. Donovan, Esq.
Association of Local Television
Stations, Inc.
1320 19th Street, N.W., Suite 300
Washington, D.C. 20036

Meredith S. Senter, Jr., Esq.
Leventhal Senter & Lerman, PLLC
2000 K Street, N.W., Suite 600
Washington, D.C. 20006

David Earl Honig, Esq.
Minority Media and
Telecommunications Council
3636 16th Street, N.W., Suite BG-54
Washington, D.C. 20010

Anne Lucey, Esq.
Viacom, Inc.
1501 M Street, N.W.
Suite 1100
Washington, D.C. 20005

R. Clark Wadlow, Esq.
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006-3705

Lisa Saunders

Lisa Saunders

*Denotes Hand Delivery

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